

Introduced by Senator HancockFebruary 10, 2015

An act to amend Section 15657.03 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 196, as introduced, Hancock. Elder abuse: protective orders.

Existing law authorizes a court to issue a protective order to restrain any person for the purpose of preventing the abuse of an elder or dependent adult, as specified. Under existing law, certain persons are authorized to file a petition for these protective orders on behalf of the elder or dependent adult, including a conservator or trustee, an attorney-in-fact, a person appointed as a guardian ad litem, or other person legally authorized to seek the order.

This bill would additionally authorize a county adult protective services agency to file a petition for a protective order on behalf of an elder or dependent adult if the elder or dependent adult has been identified as lacking capacity and a conservatorship is being sought.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 15657.03 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 15657.03. (a) (1) An elder or dependent adult who has suffered
- 4 ~~abuse as defined in Section 15610.07~~ may seek protective orders
- 5 as provided in this section.

(2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, *a county adult protective services agency in a case in which an elder or dependent adult has been identified as lacking capacity and a conservatorship is being sought*, an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek ~~such~~ *the* relief.

(b) For the purposes of this section:

(1) “Abuse” has the meaning set forth in Section 15610.07.

~~(1)~~

(2) “Conservator” means the legally appointed conservator of the person or estate of the petitioner, or both.

~~(2)~~

(3) “Petitioner” means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

~~(3)~~

(4) “Protective order” means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(B) An order excluding a party from the petitioner’s residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(C) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).

1 ~~(4)~~

2 (5) “Respondent” means the person against whom the protective
3 orders are sought and, if the petition is granted, the restrained
4 person.

5 (c) An order may be issued under this section, with or without
6 notice, to restrain any person for the purpose of preventing a
7 recurrence of abuse, if a declaration shows, to the satisfaction of
8 the court, reasonable proof of a past act or acts of abuse of the
9 petitioning elder or dependent adult.

10 (d) Upon filing a petition for protective orders under this section,
11 the petitioner may obtain a temporary restraining order in
12 accordance with Section 527 of the Code of Civil Procedure, except
13 to the extent this section provides a rule that is inconsistent. The
14 temporary restraining order may include any of the protective
15 orders described in paragraph~~(3)~~ (4) of subdivision (b). However,
16 the court may issue an ex parte order excluding a party from the
17 petitioner’s residence or dwelling only on a showing of all of the
18 following:

19 (1) Facts sufficient for the court to ascertain that the party who
20 will stay in the dwelling has a right under color of law to possession
21 of the premises.

22 (2) That the party to be excluded has assaulted or threatens to
23 assault the petitioner, other named family or household member
24 of the petitioner, or a conservator of the petitioner.

25 (3) That physical or emotional harm would otherwise result to
26 the petitioner, other named family or household member of the
27 petitioner, or a conservator of the petitioner.

28 (e) A request for the issuance of a temporary restraining order
29 without notice under this section shall be granted or denied on the
30 same day that the petition is submitted to the court, unless the
31 petition is filed too late in the day to permit effective review, in
32 which case the order shall be granted or denied on the next day of
33 judicial business in sufficient time for the order to be filed that day
34 with the clerk of the court.

35 (f) Within 21 days, or, if good cause appears to the court, 25
36 days, from the date that a request for a temporary restraining order
37 is granted or denied, a hearing shall be held on the petition. If no
38 request for temporary orders is made, the hearing shall be held
39 within 21 days, or, if good cause appears to the court, 25 days,
40 from the date that the petition is filed.

1 (g) The respondent may file a response that explains or denies
2 the alleged abuse.

3 (h) The court may issue, upon notice and a hearing, any of the
4 orders set forth in paragraph-~~(3)~~ (4) of subdivision (b). The court
5 may issue, after notice and hearing, an order excluding a person
6 from a residence or dwelling if the court finds that physical or
7 emotional harm would otherwise result to the petitioner, other
8 named family or household member of the petitioner, or
9 conservator of the petitioner.

10 (i) (1) In the discretion of the court, an order issued after notice
11 and a hearing under this section may have a duration of not more
12 than five years, subject to termination or modification by further
13 order of the court either on written stipulation filed with the court
14 or on the motion of a party. These orders may be renewed upon
15 the request of a party, either for five years or permanently, without
16 a showing of any further abuse since the issuance of the original
17 order, subject to termination or modification by further order of
18 the court either on written stipulation filed with the court or on the
19 motion of a party. The request for renewal may be brought at any
20 time within the three months before the expiration of the order.

21 (2) The failure to state the expiration date on the face of the
22 form creates an order with a duration of three years from the date
23 of issuance.

24 (3) If an action is filed for the purpose of terminating or
25 modifying a protective order prior to the expiration date specified
26 in the order by a party other than the protected party, the party
27 who is protected by the order shall be given notice, pursuant to
28 subdivision (b) of Section 1005 of the Code of Civil Procedure,
29 of the proceeding by personal service or, if the protected party has
30 satisfied the requirements of Chapter 3.1 (commencing with
31 Section 6205) of Division 7 of Title 1 of the Government Code,
32 by service on the Secretary of State. If the party who is protected
33 by the order cannot be notified prior to the hearing for modification
34 or termination of the protective order, the court shall deny the
35 motion to modify or terminate the order without prejudice or
36 continue the hearing until the party who is protected can be
37 properly noticed and may, upon a showing of good cause, specify
38 another method for service of process that is reasonably designed
39 to afford actual notice to the protected party. The protected party

1 may waive his or her right to notice if he or she is physically
2 present in court and does not challenge the sufficiency of the notice.

3 (j) In a proceeding under this section, a support person may
4 accompany a party in court and, if the party is not represented by
5 an attorney, may sit with the party at the table that is generally
6 reserved for the party and the party's attorney. The support person
7 is present to provide moral and emotional support for a person
8 who alleges he or she is a victim of abuse. The support person is
9 not present as a legal adviser and may not provide legal advice.
10 The support person may assist the person who alleges he or she is
11 a victim of abuse in feeling more confident that he or she will not
12 be injured or threatened by the other party during the proceedings
13 if the person who alleges he or she is a victim of abuse and the
14 other party are required to be present in close proximity. This
15 subdivision does not preclude the court from exercising its
16 discretion to remove the support person from the courtroom if the
17 court believes the support person is prompting, swaying, or
18 influencing the party assisted by the support person.

19 (k) Upon the filing of a petition for protective orders under this
20 section, the respondent shall be personally served with a copy of
21 the petition, notice of the hearing or order to show cause, temporary
22 restraining order, if any, and any declarations in support of the
23 petition. Service shall be made at least five days before the hearing.
24 The court may, on motion of the petitioner or on its own motion,
25 shorten the time for service on the respondent.

26 (l) A notice of hearing under this section shall notify the
27 respondent that if he or she does not attend the hearing, the court
28 may make orders against him or her that could last up to five years.

29 (m) (1) The court may, upon the filing of a declaration by the
30 petitioner that the respondent could not be served within the time
31 required by statute, reissue an order previously issued and dissolved
32 by the court for failure to serve the respondent. The reissued order
33 shall remain in effect until the date set for the hearing.

34 (2) The reissued order shall state on its face the date of
35 expiration of the order.

36 (n) (1) If a respondent, named in an order issued under this
37 section after a hearing, has not been served personally with the
38 order but has received actual notice of the existence and substance
39 of the order through personal appearance in court to hear the terms

1 of the order from the court, no additional proof of service is
2 required for enforcement of the order.

3 (2) If the respondent named in a temporary restraining order is
4 personally served with the order and notice of hearing with respect
5 to a restraining order or protective order based on the temporary
6 restraining order, but the respondent does not appear at the hearing,
7 either personally or by an attorney, and the terms and conditions
8 of the restraining order or protective order issued at the hearing
9 are identical to the temporary restraining order, except for the
10 duration of the order, then the restraining order or protective order
11 issued at the hearing may be served on the respondent by first-class
12 mail sent to the respondent at the most current address for the
13 respondent that is available to the court.

14 (3) The Judicial Council form for temporary orders issued
15 pursuant to this subdivision shall contain a statement in
16 substantially the following form:

17
18 “If you have been personally served with a temporary restraining
19 order and notice of hearing, but you do not appear at the hearing
20 either in person or by a lawyer, and a restraining order that is the
21 same as this temporary restraining order except for the expiration
22 date is issued at the hearing, a copy of the order will be served on
23 you by mail at the following address: ____.

24 If that address is not correct or you wish to verify that the
25 temporary restraining order was converted to a restraining order
26 at the hearing without substantive change and to find out the
27 duration of that order, contact the clerk of the court.”

28
29 (o) (1) Information on any protective order relating to elder or
30 dependent adult abuse issued by a court pursuant to this section
31 shall be transmitted to the Department of Justice in accordance
32 with either paragraph (2) or (3).

33 (2) The court shall order the petitioner or the attorney for the
34 petitioner to deliver a copy of an order issued under this section,
35 or a reissuance, extension, modification, or termination of the
36 order, and any subsequent proof of service, by the close of the
37 business day on which the order, reissuance, extension,
38 modification, or termination was made, to each law enforcement
39 agency having jurisdiction over the residence of the petitioner, and

1 to any additional law enforcement agencies within the court's
2 discretion as are requested by the petitioner.

3 (3) Alternatively, the court or its designee shall transmit, within
4 one business day, to law enforcement personnel all information
5 required under subdivision (b) of Section 6380 of the Family Code
6 regarding any order issued under this section, or a reissuance,
7 extension, modification, or termination of the order, and any
8 subsequent proof of service, by either one of the following
9 methods:

10 (A) Transmitting a physical copy of the order or proof of service
11 to a local law enforcement agency authorized by the Department
12 of Justice to enter orders into the California Law Enforcement
13 Telecommunications System (CLETS).

14 (B) With the approval of the Department of Justice, entering
15 the order or proof of service into CLETS directly.

16 (4) Each appropriate law enforcement agency shall make
17 available information as to the existence and current status of these
18 orders to law enforcement officers responding to the scene of
19 reported abuse.

20 (5) An order issued under this section shall, on request of the
21 petitioner, be served on the respondent, whether or not the
22 respondent has been taken into custody, by any law enforcement
23 officer who is present at the scene of reported abuse involving the
24 parties to the proceeding. The petitioner shall provide the officer
25 with an endorsed copy of the order and a proof of service, which
26 the officer shall complete and send to the issuing court.

27 (6) Upon receiving information at the scene of an incident of
28 abuse that a protective order has been issued under this section,
29 or that a person who has been taken into custody is the respondent
30 to that order, if the protected person cannot produce an endorsed
31 copy of the order, a law enforcement officer shall immediately
32 attempt to verify the existence of the order.

33 (7) If the law enforcement officer determines that a protective
34 order has been issued, but not served, the officer shall immediately
35 notify the respondent of the terms of the order and where a written
36 copy of the order can be obtained, and the officer shall at that time
37 also enforce the order. The law enforcement officer's verbal notice
38 of the terms of the order shall constitute service of the order and
39 is sufficient notice for the purposes of this section and for the
40 purposes of Section 273.6 of the Penal Code.

1 (p) Nothing in this section shall preclude either party from
2 representation by private counsel or from appearing on the party's
3 own behalf.

4 (q) There is no filing fee for a petition, response, or paper
5 seeking the reissuance, modification, or enforcement of a protective
6 order filed in a proceeding brought pursuant to this section.

7 (r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2
8 of the Government Code, a petitioner shall not be required to pay
9 a fee for law enforcement to serve an order issued under this
10 section.

11 (s) The prevailing party in any action brought under this section
12 may be awarded court costs and attorney's fees, if any.

13 (t) (1) A person subject to a protective order under this section
14 shall not own, possess, purchase, receive, or attempt to receive a
15 firearm or ammunition while the protective order is in effect.

16 (2) The court shall order a person subject to a protective order
17 issued under this section to relinquish any firearms he or she owns
18 or possesses pursuant to Section 527.9 of the Code of Civil
19 Procedure.

20 (3) Every person who owns, possesses, purchases, or receives,
21 or attempts to purchase or receive a firearm or ammunition while
22 subject to a protective order issued under this section is punishable
23 pursuant to Section 29825 of the Penal Code.

24 (4) This subdivision shall not apply in a case in which the
25 protective order issued under this section was made solely on the
26 basis of financial abuse unaccompanied by force, threat,
27 harassment, intimidation, or any other form of abuse.

28 (u) Any willful disobedience of any temporary restraining order
29 or restraining order after hearing granted under this section is
30 punishable pursuant to Section 273.6 of the Penal Code.

31 (v) This section does not apply to any action or proceeding
32 governed by Title 1.6C (commencing with Section 1788) of Part
33 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with
34 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
35 or by Division 10 (commencing with Section 6200) of the Family
36 Code. Nothing in this section shall preclude a petitioner's right to
37 use other existing civil remedies.

38 (w) The Judicial Council shall develop forms, instructions, and
39 rules relating to matters governed by this section. The petition and

- 1 response forms shall be simple and concise, and their use by parties
- 2 in actions brought pursuant to this section shall be mandatory.

O